

2/13/92

STATE OF CALIFORNIA
BOARD OF EQUALIZATION
BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Claim)	
for Refund Under the)	DECISION AND RECOMMENDATION
Hazardous Substances Tax Law)	
of:)	
)	
)	No. 117-2-20
)	
<u>Claimant</u>)	

The Appeals conference in the above-referenced matter was scheduled for by Staff Counsel Janice M. Jolley, in Sacramento, California.

Appearing for Claimant: Waived

Appearing for the Dept. of
Toxic Substances Control: Waived

Appearing for the Special
Taxes Department of the
Board of Equalization: Waived

Protested Item

Claimant protests the application of a Corporation Fee (Environmental Fee) of \$500 for the period from January 1, 1990 through December 31, 1990.

Contention

Claimant contends that it does not use, generate, store or conduct activities related to hazardous materials and thus is not liable for the fee.

Summary

Claimant is a corporation which is engaged in insurance brokerage. During calendar year 1990, claimant alleges it had about 100 employees.

The Department of Toxic Substances Control (hereinafter "DTSC") takes the position that all businesses in this state use, generate, store, or conduct activities related to hazardous materials. The definition of hazardous materials is broad enough to include many materials commonly found in the workplace. These include ink, toner fluid, heavy metals on circuit boards and computers, cleaning substances, and mercury and polychlorinated biphenyls in fluorescent lights. In addition, most businesses use motor vehicles to receive or deliver goods and services. Vehicles use hazardous materials such as lead batteries, oil and fuel. DTSC has applied the fee under the provisions of Section 25205.6 of the Health and Safety Code, subdivisions (a) and (b), which imposes a fee on corporations based on the number of employees and the nature of the business of the corporation.

Claimant was classified under SIC Code 65, "Real Estate". It seems claimant would have been more properly classified under SIC Code 6411, "Insurance Agents, Brokers and Service". Claimant alleges that it does not carry on any activity which involves hazardous materials. Claimant contends it is unfair to tax only corporations and not partnerships or individuals engaged in the same business. Claimant also contends that the materials listed by DTSC are not handled by claimant in quantities which are hazardous. None of the hazardous materials are related to petitioner's business purposes.

Analysis and Conclusions

Section 25205.6 of the Health and Safety Code provides in subdivisions (a) and (b):

"(a) On or before November 1 of each year, the department shall provide the board with a schedule of two digit SIC codes, as defined in subdivision (c) of Section 25501, as established by the United States Department of Commerce, that consists of corporations which use, generate, store, or conduct activities in this state related to hazardous materials, as defined in

injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment."

"(p) 'SIC Code' means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses."

By the terms of Section 25205.6 of the Health and Safety Code, the fee is due solely from corporations. (There is no exclusion for nonprofit corporations.) Further, the statute gives DTSC the authority to determine which SIC codes involve types of businesses which use, generate, store or conduct activities related to hazardous materials. It is not necessary to show that an individual corporation is actually involved with hazardous materials. It is only necessary to show that the corporation is in an industry as categorized by its SIC code which DTSC has determined is involved with hazardous materials.

Section 25501 of the Health and Safety Code defines "hazardous materials" in terms of quantity, concentration, or physical or chemical characteristics. DTSC has made a determination that all SIC codes involve corporations that are involved with hazardous materials. Specifically, DTSC has concluded that claimant's two-digit code (65) includes corporations which are involved with hazardous materials. Certainly, most if not all corporations utilize copy machines and fluorescent lights. Thus, corporations handle materials of the type described by DTSC above and the materials described are clearly hazardous.

It is possible for the fee to be imposed on both a lessee and a lessor with respect to the same equipment. However, it is not the activity per se that triggers the imposition of the fee but rather being in an SIC code classification.

The statutory history of Section 25205.6 of the Health and Safety Code supports the contention of DTSC that it is the Department, not the Board, which determines whether a given SIC code should be included in the schedule. As originally enacted by SB 475 (Chapter 269, Stats. 1989), effective August 3, 1989, this section began:

"(a) On or before November 1 of each year, the board [Board of Equalization] shall